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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 5, 23, 24, 32, and 34

[Docket ID OCC-2018-0040]

RIN 1557-AE59

Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations; Technical Correction

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; correction.

SUMMARY: The OCC is making technical corrections to the Capital Simplification for Qualifying Community Banking Organizations final rule that appeared in the *Federal Register* on November 13, 2019. The technical corrections align the rule text in the final rule with changes made by other final rules. The technical corrections also include a conforming edit.

DATES: This correction is effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Carl Kaminski, Special Counsel, or Daniel Perez, Senior Attorney, Chief Counsel's Office, (202) 649-5490, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Description of Technical Corrections

On November 13, 2019, the OCC, together with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (collectively, the agencies), published in the *Federal Register* a final rule titled “Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations” (the CBLR final rule).¹

Under the CBLR final rule, qualifying community banking organizations that opt into the community bank leverage ratio framework are not required to calculate tier 2 capital. The Supplementary Information section of the final rule stated, “[C]ertain of the agencies’ non-capital rules refer to ‘capital stock and surplus’ (or similar items)[,] which is generally defined as tier 1 capital and tier 2 capital plus the amount of allowances for loan and lease losses not included in tier 2 capital. The final rule amends standards referencing ‘capital stock and surplus’ (or similar items) so that an electing banking organization uses tier 1 capital plus allowances for loan and lease losses (or adjusted allowance for credit losses, as applicable).”²

In separate final rules titled “Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations” (CECL final rule)³ and “Other Real Estate Owned and Technical Amendments” (OREO final rule),⁴ the OCC made further revisions to the defined term “capital and surplus.” These final rules became effective or will become effective before the effective date for the CBLR final rule. Due to the specific phrasing of its amendatory instructions, the CBLR final rule as currently published

¹ 84 FR 61776.

² 84 FR 61787.

³ 84 FR 4222 (Feb. 14, 2019). The CECL final rule is effective as of April 1, 2019.

⁴ 84 FR 56369 (Oct. 22, 2019). The OREO final rule was originally effective as of December 1, 2019, but is now effective as of January 1, 2020. *See* 84 FR 64193 (Nov. 21, 2019).

would have inadvertently reversed certain changes made by the CECL and OREO final rules. In one instance, for example, the CBLR final rule would have reinserted a definition for “capital and surplus” that was removed by the OREO final rule. Accordingly, the OCC is correcting sections of the CBLR final rule that would have revised the term “capital and surplus” to re-incorporate the intended changes made in the CECL final rule and OREO final rule. The OCC is also making certain stylistic edits to these sections of the CBLR final rule to align them with the CECL final rule.

The term “total capital” includes tier 2 capital and therefore was revised by the CBLR final rule for the same reasons described above. The Supplementary Information section of the final rule stated, “The final rule amends standards referencing total capital so that an electing banking organization uses tier 1 capital instead of total capital.”⁵ The CBLR final rule would have amended an instance of the term “total capital” in paragraph (h)(2) of 12 CFR 5.58 but not a similar instance of the term in paragraph (h)(3). Accordingly, the OCC is also making a conforming edit to 12 CFR 5.58(h)(3) to incorporate the change made to paragraph (h)(2).

II. Regulatory Analysis

A. Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. As described above in this Supplementary Information section, this Federal Register notice makes non-substantive, technical corrections to the CBLR final rule. For that

⁵ 84 FR 61787.

reason, the OCC has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of these corrections is January 1, 2020. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. The OCC has concluded that these technical corrections are not substantive within the meaning of the APA's delayed effective date provision. Moreover, the OCC finds that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because OCC-supervised institutions, from review of the CBLR final rule, CECL final rule, and OREO final rule, were given sufficient notice as to the effects and purposes of those rules and would not have reasonably relied on the errors addressed by these technical corrections.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the OCC has determined that it is unnecessary to publish a general notice of proposed rulemaking for technical corrections. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has determined that these technical corrections do not create any new, or revise any

existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, these technical corrections are not subject to section 202 of the Unfunded Mandates Act.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (12 U.S.C. 4802) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.⁶ In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect

⁶ 12 U.S.C. 4802(a).

on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁷

Because these technical corrections do not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply.

F. Congressional Review Act

The OMB has determined that these technical corrections are not a “major rule” within the meaning of the Congressional Review Act.

Corrections

In the final rule published on November 13, 2019, at 84 FR 61776, the following corrections are made:

§ 1.2 [Corrected]

1. On page 61792, in the second column, in amendment 2, in § 1.2, paragraphs (a)(1)(ii) and (a)(2)(ii), “allowances for loan and lease losses” is corrected to read “allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,” in both instances where it appears.

§ 5.3 [Corrected]

2. a. On page 61793, in the third column, in amendment 9, in § 5.3, paragraph (e)(1)(ii), “allowances for loan and lease losses or allowance” is corrected to read “allowance for loan and lease losses or adjusted allowances”;

⁷ 12 U.S.C 4802(b).

b. On page 61794, in the first column, in amendment 9, in § 5.3, paragraph (e)(2)(i), “bank’s or savings association’s Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively” is corrected to read “Call Report”;

c. On page 61794, in the first column, in amendment 9, in § 5.3, paragraph (e)(2)(ii), “allowances for loan and lease losses” is corrected to read “allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,”; and “reported in the institution’s Call Reports, described in paragraph (e)(2)(i) of this section” is corrected to read “described in paragraph (e)(2)(i) of this section, as reported in the Call Report”.

§5.37 [Corrected]

3. a. On page 61794, in the first column, in amendment 10, in § 5.37, paragraph (c)(3)(i)(B), “allowances for loan and lease losses or allowance” is corrected to read “allowance for loan and lease losses or adjusted allowances”; and “national bank’s or Federal savings association’s Call Report” is corrected to read “Consolidated Reports of Condition and Income (Call Report)”;

b. On page 61794, in the first column, in amendment 10, in § 5.37, paragraph (c)(3)(ii)(A), “national bank’s or Federal savings association’s Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively” is corrected to read “Call Report”;

c. On page 61794, in the first column, in amendment 10, in § 5.37, paragraph (c)(3)(ii)(B), “allowances for loan and lease losses” is corrected to read “allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,” and “national bank’s or Federal savings association’s Call Reports filed under 12 U.S.C. 161 or 1464(v), respectively” is corrected to read “Call Report”.

§5.58 [Corrected]

4a. On page 61794, in the first column, in amendment 11, the instruction “Section 5.58 is amended by revising paragraph (h)(2) to read as follows:” is corrected to read “Section 5.58 is amended by revising paragraphs (h)(2) and (3) to read as follows:”; and

b. On page 61794, in the second column, in amendment 11, in § 5.58, the revised rule text is amended by adding paragraph (h)(3) to read as follows:

§5.58 Pass-through investments by a Federal savings association

* * * * *

(h) * * *

(3) The book value of the Federal savings association’s aggregate non-controlling investments does not exceed 25 percent of its total capital (or, in the case of a Federal savings association that is a qualifying community banking organization that has elected to use the community bank leverage ratio framework, 25 percent of its tier 1 capital, as used under § 3.12 of this chapter) after making the investment;

* * * * *

§ 23.2 [Corrected]

5a. On page 61795, in the first column, in amendment 15, in § 23.2, paragraph (b)(1)(ii), “allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank’s Call Report” is corrected to read “allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the Consolidated Reports of Condition and Income (Call Report)”;

b. On page 61795, in the first column, in amendment 15, in § 23.2, paragraph (b)(2)(i), “the bank’s Consolidated Reports of Condition and Income (Call Report) filed under 12 U.S.C. 161” is corrected to read “the Call Report”;

c. On page 61795, in the first column, in amendment 15, in § 23.2, paragraph (b)(2)(ii), “allowances for loan and lease losses” is corrected to read “allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,”; and “the bank’s Consolidated Report of Condition and Income filed under 12 U.S.C. 161” is corrected to read “the Call Report”.

§ 24.2 [Corrected]

6a. On page 61795, in the first column, in amendment 17, in § 24.2, paragraph (b)(1)(ii), “allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank’s Call Report” is corrected to read “allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the Consolidated Reports of Condition and Income (Call Report)”;

b. On page 61795, in the second column, in amendment 17, in § 24.2, paragraph (b)(2)(i), “the bank’s Consolidated Reports of Condition and Income (Call Report) filed under 12 U.S.C. 161” is corrected to read “the Call Report”;

c. On page 61795, in the second column, in amendment 17, in § 24.2, paragraph (b)(2)(ii), “allowances for loan and lease losses” is corrected to read “allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,”; and “the bank’s Call Report as filed under 12 U.S.C. 161” is corrected to read “the Call Report”.

§32.2 [Corrected]

7a. On page 61795, in the second column, in amendment 19, in § 32.2, paragraph (c)(1)(ii), “allowances for loan and lease losses or allowance for credit losses, as applicable, as

reported in the national bank's or Federal savings association's Call Report" is corrected to read "allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the Consolidated Reports of Condition and Income (Call Report)";

b. On page 61795, in the second column, in amendment 19, in § 32.2, paragraph (c)(2)(i), "the bank's or savings association's Consolidated Reports of Condition and Income (Call Report)" is corrected to read "the Call Report"; and

c. On page 61795, in the second column, in amendment 19, in § 32.2, paragraph (c)(2)(ii), "allowances for loan and lease losses" is corrected to read "allowance for loan and lease losses or adjusted allowances for credit losses, as applicable,".

§34.81 [Corrected]

8. On page 61795, in the second and third columns, remove heading "PART 34—REAL ESTATE LENDING AND APPRAISALS," remove amendments 20 and 21, and renumber the subsequent amendments to reflect the removal.

Dated: November 27, 2019.

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